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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/414,764

Applicant(s)

PAULEY ET AL.

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 7-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Applicant's response of 1-18-02 is noted. Applicant has elected the species of claims 11,12,17,20. Currently claims 1-3,5,7-20, are under examination with claims 4 and 6 being withdrawn as being non-elected. Because the prior art discloses the features of claims 5,8, and 10 the examiner has examined these claims as opposed to withdrawing them from consideration. With respect to applicant's traversal of the species requirement the examiner notes that applicant has stated the distinct species to be "variants" of each other known to those "skilled in the art". To traverse the species election on the ground that the species are not patentably distinct, applicant needed to state that the species are "obvious variants" of each other, not just variants. The fact that they are variants known to those skilled in the art is not the same as obvious variants known to those of ordinary skill in the art. Because applicant has not stated the species to be obvious variants of each other, they are still considered to be patentably distinct and claims 4 and 6 are withdrawn from consideration.

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the tampon with associated structure (coverstock, bell shape) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 12,15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 12, there is no antecedent basis for "said ratio of rayon fiber to superabsorbent fiber". It has not been previously claimed that there is a ratio at all and it was not claimed that the ratio was for rayon to superabsorbent.

With respect to claim 15, the examiner is not clear what a "bell" shape is. There are no figures in this application showing the shape of a bell so this limitation is considered indefinite. Is this supposed to mean a shape like the liberty bell, or a bell pepper or a diving bell? The scope of this claim is not clear to the examiner.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3,5,8-11,14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Matthews (4335721).

Matthews discloses a tampon with a coverstock that is made from a mixture of absorbent and non-absorbent fibers as claimed. Matthews discloses the claimed type of fibers in the claimed ratio. See column 2, lines 19-56. The examiner considers Matthews to disclose a bell shape. For claim 20, applicant never recited that the fibers are made from the claimed types and the claim is satisfied by the Markush group of

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claim 18. The scope of the claim has not been narrowed down from the scope of the Markush grouping.

6. Claims 1,9,14,15 are rejected under 35 U.S.C. 102(b) as being anticipated by Lloyd et al. (5374258).

Lloyd discloses a tampon with a coverstock that is made up of absorbent and non-absorbent fibers as claimed. See column 2, lines 51-57. The examiner considers Lloyd to disclose a bell shape.

7. Claims 1-3,5,7-11,13,14,16,18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Foley et al. (5817077).

Foley discloses a tampon that is made with absorbent and non-absorbent fibers as claimed. Foley discloses the claimed type and claimed ratio of fibers. The tampon has a coverstock. See column 5, lines 36-60. Foley discloses the claimed denier for the fibers. For claim 20, applicant never recited that the fibers are made from the claimed types and the claim is satisfied by the Markush group of claim 18. The scope of the claim has not been narrowed down from the scope of the Markush grouping.

8. Claims 1-3,5,8-11,15,16,18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Olofsson et al. (3986511).

Olofsson discloses a tampon that is made from a mixture of absorbent and non-absorbent fibers as claimed. See column 3, lines 8-44. Olofsson discloses the claimed type and ratio of fibers. The examiner considers Olofsson to disclose a bell shape. For claim 20, applicant never recited that the fibers are made from the claimed types and

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the claim is satisfied by the Markush group of claim 18. The scope of the claim has not been narrowed down from the scope of the Markush grouping.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Alikhan et al. (5006116).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR
February 27, 2002


DENNIS RUHL
PRIMARY EXAMINER